IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9813 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMESHKUMAR P SAGAR - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR IS SUPEHIA for Petitioner(s) : 1,

MR L B DABHI, Ld.AGP, for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the order dated 22.12.1993 and further prayed for direction to the respondent to refund the amount of penalty already deducted.

2. The matter was admitted and rule was issued on 22nd September, 1995. However, petitioner's advocate had not pressed for interim relief.

3. It is the case of the petitioner that the petitioner was a retired Government Officer who has retired while holding the post of Deputy Collector. The charge-sheet dated 21.02.1987 was issued to the petitioner for holding a departmental inquiry in respect of four charges inter alia (1) as per the instruction dated 11.10.1977, the petitioner was required to regularise encroachment in Sardarnagar Township at the rate of Rs.18.75 per sq mtr but he did so at the rate of Rs.7.50 only. (2) He also regularised the encroachment for the period subsequent to 1977 though he was to do so for the

period prior to 1977 (3) While granting the open land he did not obtain the opinion of the Town Planner, and (4) open plots were to be sold by auction but instead of that the petitioner granted them to the applicants.

4. Petitioner has filed detailed reply to the charge-sheet vide his explanation dated 23.11.1987 pointing out that whatever he had done, was done as per law keeping in mind the various instructions issued from time to time by the Government of India, Government of Gujarat and Government of Bombay as also the provisions of Displaced persons Act, 1954. Thereafter an inquiry officer was appointed to conduct the departmental inquiry against the petitioner in respect of the aforesaid charges. No oral evidence was adduced at the inquiry by either side. The inquiry officer as per his report dated 19.03.1992 found all the charges proved against the petitioner. The Government accepted the findings of the Inquiry Officer and issued a show cause notice dated 1.5.92 calling upon the petitioner to represent his case in

writing. No penalty was proposed in the notice.

5. By the letter dated 28.08.92 the petitioner replied to show cause notice. In the reply, the petitioner also stated that his defence statement already submitted by him should also be taken into consideration. By the order dated 22.12.1993, the penalty of reduction in pension of Rs.200/- per month on permanent basis was imposed on the petitioner. The said order is challenged in the present petition by the petitioner.

6. Mr.I.A.Supehia, learned advocate for the petitioner has submitted that though the petitioner has given detailed explanation with regard to the charges, the same were not considered by the Disciplinary Authority and mechanically the order was passed. He has further submitted that the order of the Disciplinary Authority is non-speaking order and he has not dealt with all the contentions raised and hence, the order passed by the

Disciplinary Authority is without application of mind and also in violation of principles of natural justice. In support of his submission he relied upon the decision dated 10.09.2003, rendered by this Court in Special Civil Application No.499 of 1999 in the case of G.H.Chkarverty Vs. State of Gujarat, wherein the Court has taken the view that no reasons have been given by the Respondent Authority in respect of not accepting the reply of the petitioner nor there was any discussion in the order. The Court further observed that it is a duty of the Respondent Authority to apply its mind while calling for the explanation from the petitioner and while supplying the report of the Inquiry Officer and to consider the same with application of mind. Merely 'considering' and saying, 'it is not accepted', is not enough, they should give reason in support of the conclusion of not accepting the reply submitted by the petitioner. The Court further held that in absence of the reason as to on what basis the authority has rejected the reply submitted by the petitioner, it is also not even known to the Court. The Court has therefore allowed

the petition and quashed and set aside the order which was challenged before the Court and the Court has further directed the respondent to pay pension which has been refused because of the punishment order dated 15.12.1998 back to the petitioner within three months from the date of receiving the order.

7. Mr.Supehia has further submitted that the aforesaid order was challenged by the State before the Division Bench of this Court in L.P.A. No.50 of 2005 and the said appeal was dismissed by the Division Bench holding that principles of natural justice would step into such matters. Filing of reply is not a mere formality. Without considering the same, if the order is passed, then the order is required to be quashed and it was rightly quashed by the learned Single Judge.

8. Mr.Supehia has further relied upon decision of this Court in L.P.A No.1798 of 2004 in case of State of Gujarat Vs. Tushar C Shah, wherein the Division Bench has taken the view that the order of

punishment is liable to be nullified on the ground that the same was non speaking order. The Court has discussed at length the issue and relied on various decisions of the Hon'ble Supreme Court and ultimately came to the conclusion that the importance of the right available to the delinquent employee to make representation not only against the procedure adopted by the inquiry officer but also the merits of the findings recorded by him and the disciplinary authority, if any, by disagreeing with the findings of Inquiry Officer. The Court further observed that it is open to the delinquent to show that the inquiry was not held in accordance with relevant statutory rules, that he was not given full opportunity of defence and that the findings recorded by the inquiry officer are not supported by legally admissible evidence or that the finding on any particular charge is based on no evidence. If the disciplinary authority disagrees with the finding recorded by the Inquiry Officer on one or more than one charges and reasons for disagreement are communicated to the delinquent, then he can show that such reasons are legally

unsustainable or that tentative finding recorded by the disciplinary authority is not supported by evidence or that the disciplinary authority has ignored the material evidence. On receipt of the representation of the delinquent, the disciplinary authority gets an opportunity to consider the objections and the plea taken by him and then decide whether or not the same have merit. The Court therefore, took the view that it is imperative for the disciplinary authority to record reasons, howsoever briefly, indicating an objective application of mind to the points taken by the delinquent in his reply/representation. Such application of mind has to be reflected in the ultimate order to be passed by the disciplinary authority. This is the only way in which the disciplinary authority can comply with the requirement of passing of a speaking order.

9. Mr.Supehia has drawn attention of the Court to Para:2.14 of the guide lines which deals with the final order. On the basis of this, he has submitted that the disciplinary authority has violated the

said guidelines while passing the impugned order of punishment against the petitioner.

10. On the basis of the facts of the present case, decisions and guidelines of the State Government Mr.Supehia submitted that the impugned order is absolutely illegal and violative of principles of natural justice and it therefore deserves to be quashed and set aside.

11. Mr. L.B.Dabhi, learned AGP for the respondent State has submitted that in respect of each charge levelled against the petitioner, explanation given by the petitioner, was considered by the Inquiry Officer and Inquiry Officer has also given reason for non acceptance of the explanation given by the petitioner. After considering the charges levelled against the petitioner and the explanation tendered by the petitioner, the Inquiry Officer has come to the conclusion that charges levelled against the petitioner were proved. Based on the report of the Inquiry Officer, show cause notice was issued and reply to the same was given by the petitioner. He

has relied upon the submissions made before the Inquiry Officer. After considering the reply to the show cause notice, the Disciplinary Authority has found himself in total agreement with the finding of the Inquiry Officer and has at length discussed all the issues which were raised by the petitioner in his explanation. The Disciplinary Authority has thought it fit to mechanically reproduce the said facts in the impugned order. The Inquiry Officer has at length considered the reply and the order as well as documentary evidence and arrived at the conclusion that charges were proved against the petitioner, and since the petitioner has already retired, the Disciplinary Authority has imposed the penalty of reduction of Rs.200/- from the pension with future effect. The Disciplinary Authority has also referred to the earlier order passed against the petitioner whereby the penalty of reduction of Rs.100/- was imposed upon the petitioner. In this view of the matter, the Disciplinary Authority has come to the conclusion that penalty of reduction of Rs.200/- from the pension is quite, just and proper.

12. Mr.Dabhi has further relied upon the decision of Hon'ble Supreme Court in case of State of Rajasthan Vs. Sujata Malhotra reported at (2003) 9 SCC 287 wherein it is held that the High Court possibly would not be within its power to interfere with an order of punishment inflicted in a departmental proceeding until and unless any lacuna in the departmental proceeding is noticed or found. He has further relied upon the decision of the Apex Court in the case of Union of India Vs. P. Chandra Mouli reported in (2003) 10 SCC 196 wherein it is held that once charges against the delinquent are established, the quantum of punishment is for the employer to decide and the court ordinarily would not interfere with the order on the quantum of punishment, once the court comes to a conclusion that there has been no infirmity with the procedure.

13. After having heard the learned counsel of the petitioner and the learned AGP for the respondent State and after having considered the Inquiry

Officer's report, petitioner's explanation and the order passed by the Disciplinary Authority and after having minutely examined the judgments of this Court relied upon by the petitioner and the judgments of the Hon'ble Supreme Court relied upon by the respondent State, the Court is of the view that it cannot be said that since the order passed by the respondent authority is non-speaking order, the order deserves to be quashed and set aside. The Inquiry Officer has dealt with all the issues raised by the petitioner and has given cogent reasons as to why the explanation of the petitioner has not been accepted. The Disciplinary Authority was in complete agreement with the finding arrived at by the Inquiry Officer and when the petitioner has relied upon the same submissions which have been made before the Inquiry Officer, it is not necessary to reproduce all the submissions in the order of the Disciplinary Authority. The Disciplinary Authority has examined the facts and applied its mind and arrived at conclusion with regard to the imposition of penalty of reduction of Rs.200 from the pension of the petitioner.

Disciplinary Authority has also taken into consideration and found that the penalty of reduction of Rs.100/- from the pension of the petitioner was earlier imposed.

14. Considering the entire facts of the case and taking into considering the two judgments relied upon by the learned AGP, the Court is of the view that this is not the fit case where the Court has to exercise its writ jurisdiction under Article 226. The punishment imposed by the Disciplinary Authority is not shockingly disproportionate looking to the charges levelled against the petitioner. From the record it appears that because of the petitioner's indulgence in various matters, the State Exchequer has suffered financial loss and when such charges are proved, no leniency was shown to him by the Disciplinary Authority.

15. In view of the above discussion, the Court is of the view that it is not fit case where the Court has to interfere while exercising its powers under Article 226 of the Constitution of India. The

petition is therefore, dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

amit